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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1969

## No. 1194

JOHN C. STEWART,

Petitioner,

versus

WATERMAN STEAMSHIP CORPORATION and ALCOA STEAMSHIP CO., INC.,

Respondents.

## BRIEF OF ALCOA STEAMSHIP COMPANY, INC., IN OPPOSITION TO THE GRANTING OF A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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## LIST OF AUTHORITIES

### TEXTS


Page

Edelman, Maritime Injury and Death, Vol. 1, p. 9 ..... 4


### CASES


Farrell v. U.S., (1949), 335 U.S. 511, 69 S.Ct. 707, 93 L.Ed. 850 ..... 4

Muruaga v. United States, et al (C.C.A. 2nd, 1949), 172 F.(2d) 318, 1949 A.M.C. 214 ..... 4

The Osceola, (1903), 189 U.S. 158, 23 S.Ct. 483, 47 L.Ed. 760 ..... 4

Warren v. United States, (1951), 340 U.S. 523, 76 S.Ct. 423, 95 L.Ed. 503 ..... 4

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MAY IT PLEASE THE COURT:

Not only is there no important or special reason for granting a writ of certiorari in this case, but there is no reason whatsoever to do so.

The claim of petitioner, a seaman, as against Alcoa Steamship Company, Inc., was solely to recover maintenance and cure. No claim was asserted against Alcoa for damages and no accidental injury in Alcoa's employ was alleged. At the trial in the district court, it was

contended that the seaman was suffering from grand mal epilepsy. The district judge, in a formal, written opinion, which was in every way fully supported by the record, found that the seaman:

> "... was a grand mal epileptic before, during, and after his employment aboard ... the SS ALCOA PARTNER."

The court also found that the seaman's grand mal epilepsy was not caused by, nor did it flare up during, his service with Alcoa.

From these findings, the Court concluded that the seaman was not entitled to recover maintenance and cure from Alcoa, and dismissed the complaint.

The Court of Appeals, following briefs and oral argument, affirmed without dissent the decision of the district court, finding that the record fully supported the conclusion that the seaman was an epileptic, "before, during, and after his employment ... with Alcoa".

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The petition for a writ of certiorari is written as though the case had never been tried, and as though the bare, original assertions of the seaman, made in the district court, were in fact true, and had in fact been established and proven at the trial. Quite otherwise, the record here, just as the two courts below found, establishes that petitioner's condition is no different now from what it was "before, during, and after" his service with Alcoa.

Furthermore, this matter presents the clear case of a seaman, declared unfit for sea duty by the United States Public Health Service Hospital before his employment with Alcoa, misrepresenting his medical status to the shipowner, by signing aboard Alcoa's vessel and holding himself out to Alcoa as fit for duty, when he knew that he was actually unfit by reason of long-standing epilepsy and by reason of a specific unfit for duty discharge by the Public Health Service Hospital.

Accordingly, this is not a case where the seaman sustained a disabling injury while employed by the shipowner; nor does it involve an illness which flared up or manifested itself aboard the vessel. The case rather involves a seaman who has been suffering from an incurable disease, epilepsy, for many years prior to his service with the shipowner, Alcoa, and who had in fact been specifically diagnosed as an epileptic before entering the shipowner's employment.

Nothing more occurred aboard Alcoa's vessel than one or more of a long series of epileptic seizures which originally began to occur shortly after 1946, with the seizures having no side or after effects.

Finally, the seaman had actually been discharged by the Public Health Service Hospital as unfit for duty before his employment with Alcoa. As a result, when the Alcoa vessel returned to the United States in April, 1961, the United States Coast Guard, having learned that the seaman had been declared unfit for duty before joining the Alcoa vessel, immediately contacted the seaman and took up his seaman's documents. Sev-

eral days thereafter, on May 1, 1961, in an effort to have his documents returned, the seaman was admitted as an inpatient at the Public Health Service Hospital in New Orleans and was examined. The doctors concluded, just as they had concluded before the seaman was employed by Alcoa, that he was suffering from epilepsy and should remain on anticonvulsant drugs. Apparently, he did so, because there is no record of his having received medical attention or treatment of any nature or kind whatsoever during 1961 and early 1962, that is, for an entire year after leaving Alcoa's vessel. In fact, in April, 1961, the seaman returned to the hospital, not to receive medical attention or treatment, and not because the sequence of his seizures had in any way altered, but to have the doctors review his condition once again, so as to ascertain whether he was able to return to sea.

This case, therefore, falls squarely within the holdings that a seaman is not entitled to recover maintenance and cure when the illness does not occur and is not aggravated or manifested while in the service of the ship. *The Osceola,* (1903), 189 U.S. 158, 23 S.Ct. 483, 47 L.Ed. 760; *Warren v. United States,* (1951), 340 U.S. 523, 76 S.Ct. 423, 95 L.Ed. 503; *Edelman, Maritime Injury and Death,* Vol. I, p 9.

The case also falls squarely within the basic principle that a seaman suffering from an incurable disease is not entitled to maintenance beyond the date of maximum medical improvement. *Farrell v. U.S.,* (1949), 335 U.S. 511, 69 S.Ct. 707, 93 L.Ed. 850; *Muruaga v. United States, et al,* (C.C.A. 2nd, 1949), 172 F.(2) 318, 1949 A.M.C. 214.

Accordingly, it is respectfully submitted that the findings and judgments of the lower courts are all fully supported by the record and by the law, that there exists here no basis whatsoever for the granting of a writ of certiorari, and that the writ should be denied.

Respectfully submitted,

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**CERTIFICATE**

I, the undersigned, hereby certify that I have this day mailed, postage prepaid, a true copy of the foregoing brief for the respondent to Messrs. Kierr and Gainsburgh, 1718 National Bank of Commerce Building, New Orleans, Louisiana, 70112, attorneys for petitioner, and Messrs. Phelps, Dunbar, Marks, Claverie & Sims, Hibernia Bank Building, New Orleans, Louisiana 70112, attorneys for co-respondent.

New Orleans, Louisiana, March , 1970.

William E. Wright